

PAUL E. COOPER  
EXECUTIVE ASSISTANT CITY ATTORNEY

MARY T. NUESCA  
ASSISTANT CITY ATTORNEY

SHARON B. SPIVAK  
DEPUTY CITY ATTORNEY

JENNIFER L. BERRY  
DEPUTY CITY ATTORNEY

OFFICE OF  
**THE CITY ATTORNEY**  
CITY OF SAN DIEGO  
**JAN I. GOLDSMITH**  
CITY ATTORNEY

1200 THIRD AVENUE, SUITE 1620  
SAN DIEGO, CALIFORNIA 92101-4178  
TELEPHONE (619) 236-6220  
AX (619) 236-7215

November 4, 2015

**REPORT TO THE CHARTER REVIEW COMMITTEE**

**REVIEW OF CITY ADVISORY BOARDS AND COMMITTEES**

On July 2, 2015, the Charter Review Committee (Committee) requested an update to a chart previously prepared by the City Attorney's Office outlining the City's various boards and advisory committees. The Committee made the request in response to a proposal addressing San Diego Charter (Charter) section 43. The Committee requested information regarding Brown Act compliance, conflict of interest disclosures, reporting to the City Council, indemnification, and sunset review processes. In response, we have prepared the attached chart summarizing the City's active boards and advisory committees established under the law provided in Charter section 43. This Chart does not include boards established under other laws.<sup>1</sup>

In addition to establishing the Citizens' Review Board on Police Practices, Charter section 43 allows the City to create two types of advisory boards and committees: Charter section 43(a) allows the Council to create permanent advisory boards by ordinance; Charter section 43(b) allows the Council or Mayor to create temporary committees with clearly defined objectives, with such boards dissolving once objectives are met. The following chart outlines the differences between Charter section 43(a) and 43(b) boards and committees:

<b>Charter § 43(a)</b>	<b>Charter § 43(b)</b>
Permanent	Temporary
Created by ordinance	Informal creation
Created by Council	Created by Mayor or Council
Dissolve by ordinance	Automatically dissolve when work complete

<sup>1</sup> Because this chart was requested as part of the Committee's review of Charter section 43, only those boards and committees established pursuant to that section have been included. Boards, committees, and commissions established by sections of the Charter other than section 43, entities that may include City appointees but are not created by the City, and entities otherwise recognized by the Council Policy but not related to section 43 are not included.

## **I. BROWN ACT**

The chart of the City's boards and committees does not contain a column addressing Brown Act compliance because the vast majority of section 43 boards and committees are subject to the Brown Act. The Brown Act is California's "Open Meeting" Law for local legislative bodies. Cal. Gov't Code § 54953(a). The Brown Act applies to all legislative bodies of local agencies. Cal. Gov't Code §§ 54952-54953. A "legislative body," as defined in the Brown Act, includes a "commission, committee, board, or other body of a local agency, whether permanent or temporary, decision making or advisory, created by charter, ordinance, resolution, or formal action of a legislative body." Cal. Gov't Code § 54952(b). All Charter section 43(a) committees are formed by ordinance and are therefore subject to the Brown Act. Additionally, pursuant to Council Policy 000-16, all City-appointed boards, commissions, corporations, and committees thereof are subject to the Brown Act.

Charter section 43(b) committees are subject to the Brown Act if they are created by ordinance, resolution or other formal action of the Council. Generally, when the Council creates a Charter section 43(b) committee, it is done by resolution and the applicability of the Brown Act pursuant to Council Policy 000-16 is specifically stated. Committees created by the Mayor would need to be analyzed on an individual basis to determine the applicability of the Brown Act.

## **II. CONFLICT OF INTEREST CODES**

Whether a committee is required to have a conflict of interest code is a fact-based inquiry requiring an analysis of the specific committee's advisory scope and decision-making responsibility. The City Attorney's Office routinely analyzes whether specific boards and committees are required to have a conflict of interest code. Boards and committees that operate in a solely advisory capacity are not necessarily required to have a conflict of interest code, as the governing law balances the privacy rights of individual board members against the public's need for disclosure of their economic interests. Advisory boards and committees that make recommendations that are routinely approved by the legislative body without changes generally would be those that require a conflict of interest code under the Political Reform Act of 1974 (the Act).

The Act requires many state and local government employees and public officials to disclose personal financial interests. The City has incorporated the requirements of the Act into the Municipal Code, requiring certain City boards and committees to adopt a conflict of interest code. SDMC § 26.0101, *et. seq.* The chart includes a column indicating whether a committee has a conflict of interest code. The conflict of interest codes for City boards and commissions that have one can be found on the City Clerk's website.

The Act applies to "public officials," defined as every member, officer, employee or consultant of a state or local government agency. Cal. Gov't Code § 82048. For the purposes of a volunteer committee, the following definition under the Act applies: "Members" includes unsalaried members of committees, boards or commissions with decision-making authority; meaning the body has the authority to make a final governmental decision, to compel or prevent the making of a governmental decision through use of an exclusive power to initiate or veto that

may not be overridden, or it makes substantive recommendations that are, and over an extended period of time have been, regularly approved without significant amendment or modification by another public official or governmental agency. *See* Cal. Code Regs. title 2, § 18700(a).

### **III. REPORTING TO CITY COUNCIL**

The updated chart includes specific reporting obligations for Charter section 43 boards and committees.

### **IV. INDEMNIFICATION**

Each advisory board or committee must be individually analyzed to determine the City's duty to indemnify as issues arise. The City's duty to indemnify is not an issue of Charter law, but is dependent on whether there are other state law obligations based on an analysis of the specific duties of each advisory board or committee. The chart therefore does not have a column addressing indemnification.

This office previously analyzed whether the City had a duty to indemnify members of citizen advisory groups in an April 8, 2010 memorandum to Chris Zirkle, Deputy Director, Park and Recreation Department. The memorandum concluded that, in the absence of a City commitment to indemnify a particular citizen advisory group, the City may nonetheless be required to indemnify members as "employees" required to be indemnified by public entities under the California Government Claims Act (Act), codified at California Government Code sections 810-996.6. 2010 City Att'y MS 919, 921 (2010-2; Apr. 8, 2010). The memorandum added that whether a member of any particular citizen advisory group was an "employee" under the Act would require a fact-specific, case-by-case analysis of a particular advisory group and its members. *Id.* at 923.<sup>2</sup>

### **V. SUNSET REVIEW PROCESS**

There is no uniform sunset review process applicable to Charter section 43 boards and committees, as those created under section 43(a) are intended to be permanent with no sunset. (See chart on page 1 of this memorandum.) Despite their permanency, a number of Charter section 43(a) boards are currently inactive.

---

<sup>2</sup> For example, this office analyzed the City's duty to indemnify the Airport Advisory Committee (AAC) in a November 17, 2014 memorandum to Cybele Thompson, Director, Real Estate Assets. In determining the City likely had a duty to indemnify the Airport Advisory Committee, the memorandum cited Charter section 117(a)(2), which defines employees of the City to include all members of City boards and commissions. City Att'y MS 2014-23 (Nov. 17, 2014). Based on the Charter definition, as well as analysis based on the relationship between the City and the members of the AAC, this office opined that the City was likely required to indemnify members of the AAC. *Id.*

REPORT TO THE CHARTER  
REVIEW COMMITTEE

-4-

November 4, 2015

By contrast, Charter section 43(b) committees are intended to be temporary and "shall be dissolved upon the completion of the objectives for which they were created." Dissolution occurs automatically. For this reason, there are very few active Charter section 43(b) committees.

JAN GOLDSMITH, CITY ATTORNEY

By /s/ Sharon B. Spivak  
Sharon B. Spivak  
Deputy City Attorney

By /s/ Jennifer L. Berry  
Jennifer L. Berry  
Deputy City Attorney

JLB:SBS:ccm:sc  
RC-2015-6  
Doc. No. 1162689  
Attachments  
cc: Elizabeth Maland, City Clerk

ADVISORY BOARD OR COMMITTEE	CHARTER SECTION	SAN DIEGO MUNICIPAL CODE SECTION(S)	COUNCIL POLICY OR RESO	STATE OR FEDERAL LAW	CONFLICT OF INTEREST CODE	REPORTING TO CITY COUNCIL
Airport Advisory Committee	43(a)	26.2201 et seq.				
Arts and Culture Commission	43(a)	26.0701 et seq.			Yes	Report on as needed basis to Mayor and Council at least annually. SDMC § 26.0708. Executive Director to prepare and submit reports to the Mayor and Council pertaining to the purpose, duties and functions of the Commission and Commission staff. SDMC § 26.0713(j) (no timing in code).
Balboa Park Committee	43(a)	26.30(b)				
Bicycle Advisory Committee	43(b)		R-308794			
Board of Building Appeals and Advisors	43(a)	111.0207		2007 Cal. Bldg. Code § 108.8	Yes	
Citizens' Equal Opportunity Commission	43(a)	26.16				Quarterly reports to Committee on Budget and Government Efficiency and Council. SDMC § 26.16 (c)(3).
Citizens' Review Board On Police Practices	43(c)					

ADVISORY BOARD OR COMMITTEE	CHARTER SECTION	SAN DIEGO MUNICIPAL CODE SECTION(S)	COUNCIL POLICY OR RESO	STATE OR FEDERAL LAW	CONFLICT OF INTEREST CODE	REPORTING TO CITY COUNCIL
Community Forest Advisory Board	43(a)	26.0501 et seq.				
Consolidated Plan Advisory Board	43(a)	26.2101 et seq.	Council Policy 700-02		Yes	Report to the Public Safety and Livable Neighborhoods Committee twice per year. SDMC § 26.2113(f).
Community Reinvestment Review Advisory Committee	43(a)	26.2301 et seq.				
Gang Prevention and Intervention	43(a)	26.1901 et seq.				No less than quarterly reports to the Public Safety and Livable Neighborhoods Committee of the City Council. SDMC § 26.1903(h). Written annual report on the status of the Commission and its activities to the Mayor and City Council. SDMC § 29.1903(i).
Historical Resources Board <sup>1</sup>	43(a)	111.0206			Yes	

<sup>1</sup> The City is not required to have an HRB under state law. However, having one that meets state requirements means the City gets funding and assistance from the state for historical resource preservation surveys and other activities. In other cities the Planning Commission also serves as the historical resources commission for the purposes of fulfilling the "Certified Local Government" status requirements.

ADVISORY BOARD OR COMMITTEE	CHARTER SECTION	SAN DIEGO MUNICIPAL CODE SECTION(S)	COUNCIL POLICY OR RESO	STATE OR FEDERAL LAW	CONFLICT OF INTEREST CODE	REPORTING TO CITY COUNCIL
Housing Advisory and Appeals Board	43(a)	98.0101 et seq.		Cal. Health & Safety Code § 17920.6; Cal. Building Code § 108.8 (Title 24 California Code of Regulations)	Yes	
Housing Commission	43(a)	98.0301		Cal. Health & Safety Code § 34290-34293	Yes	
Human Relations Commission	43(a)	26.0901 et seq.				Annual written report of activities to Mayor and Council. SDMC § 26.0906(f).
Independent Rates Oversight Committee (IROC)	43(a)	26.2001 et seq.			Yes	Annual public report to the Mayor and Council. SDMC § 26.2003(a)(9).
International Affairs Board	43(a)	26.22 et seq.				
La Jolla Shores Planned District Advisory Board	43(a)	1510.0105			Yes	
Library Commissioners	43(a)	26.0301 et seq.				

ADVISORY BOARD OR COMMITTEE	CHARTER SECTION	SAN DIEGO MUNICIPAL CODE SECTION(S)	COUNCIL POLICY OR RESO	STATE OR FEDERAL LAW	CONFLICT OF INTEREST CODE	REPORTING TO CITY COUNCIL
Mission Bay Park Committee <sup>2</sup>	43(a)	26.30(c)			Yes	
Municipal Golf Committee	43(a)	26.30(d)				
Old Town San Diego Planned District Design Review Board	43(a)	1516.0103			Yes	
Park and Recreation Board <sup>3</sup>	43(a)	26.30(a)			Yes	
Parking Advisory Board	43(a)	26.1801 et seq.				
Qualcomm Stadium Advisory Board	43(a)	26.1302			Yes	
Relocation Appeals Board	43(a)	98.0302		Cal. Health & Safety Code § 33417.5	Yes	
Senior Affairs Advisory Board	43(a)	26.1501 et seq.				Annual report to Mayor and Council on "State of the Seniors." SDMC § 26.1503 (b).

<sup>2</sup> Also functions as the Mission Bay Park Improvement Fund Oversight Committee, required per Charter section 55.2.

<sup>3</sup> Also functions as the San Diego Regional Parks Improvement Fund Oversight Committee, required per Charter section 55.2.



ADVISORY BOARD OR COMMITTEE	CHARTER SECTION	SAN DIEGO MUNICIPAL CODE SECTION(S)	COUNCIL POLICY OR RESO	STATE OR FEDERAL LAW	CONFLICT OF INTEREST CODE	REPORTING TO CITY COUNCIL
Small Business Advisory Board	43(a)	26.06				Annual report to the Mayor and Council. SDMC § 26.06(b).
Sustainable Energy Advisory Board	43(a)	26.04				
Utility Undergrounding Advisory Committee	43(b)		R-308721			
Wetlands Advisory Board	43(a)	26.1001 et seq.			Yes	
Youth Commission	43(a)	26.1601 et seq.				Periodic reports to the Public Safety and Livable Neighborhoods Committee of the City Council. SDMC § 26.1605(e).